

REMARKS

This is in response to the outstanding Office Action, dated January 10, 2007. The pending claims are Claims 1 through 51. Favorable reconsideration of the application, and a Notice of Allowance, is respectfully requested.

The Examiner rejected Claims 1 through 51 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,869,176 to Dorchester et al. These rejections are respectfully traversed in light of the following comments and attached affidavit.

Independent Claims 1, 17, 31 and 36 define the invention as an article or method with a substantially clear capstock layer.

The claimed invention is not shown or suggested in the art of record. For the reasons stated in Applicant's previous response, Applicants respectfully disagree with the Examiner that the claimed structure is not patentably distinct and respectfully submit that the Office Action does not meet the criteria for establishing a *prima facie* case of obviousness. Additionally, assuming *arguendo* that the Examiner has met this burden, Applicant hereby submits an affidavit by George Walrath to rebut the Examiner's assertion of obviousness.

As noted in the affidavit, Mr. Walrath is an expert in vinyl siding, having five (5) years of experience in the design and manufacture of vinyl siding and in the design of variegated siding. As Mr. Walrath points out, the Dorchester et al. reference teaches a plastic article with a colored capstock having a strongly colored background with contrasting white or lighter color streaks formed by the accent color pellets, and provides a light colored background with contrasting darker streaks of any color (see column 3, lines 54 through 59), and that the substrate is hidden from view when the siding is applied to a building (see column 5, lines 2 through 4). In fact, Dorchester discusses how his invention is capable of coloring the capstock by adjusting the proportion of PMS in the accent color pellets to disperse the color into the base material (of the capstock), but not by providing a capstock which is

substantially clear. Dorchester also states that panels in which the accent color has been allowed to disperse into the base material should wear better than a base material having only hard streaks with no dispersion of accent color (ref. col. 4, lines 24 - 29). Thus Dorchester consistently provides for a colored capstock and teaches away from a substantially clear capstock, as Dorchester explicitly states that a capstock without color would not wear well. Additionally, the Dorchester et al. reference teaches only siding having an opaque capstock applied to a substrate which is always hidden from view when the siding is applied to a building, and therefore teaches away from the invention as recited in Applicant's claims, where the capstock layer is substantially clear, and therefore the substrate is visible.

Furthermore, Mr. Walrath points out that the instant invention creates unexpected results, in that the coloration of the invention is unexpectedly brilliant, with unexpectedly improved woodgrain effects. As shown in the attached samples, the prior art designs provide a much more muted coloration and graining, while the invention creates a more brilliant color and contrast. Comparing the samples, the Examiner should note (by comparing the samples of the invention and prior art side-by-side, as shown in the attached photocopies), e.g. the "Red Oak" or "RO" samples, when turned upside-down, have a very similar color in the substrate. However, when turned over, the invention (with clear capstock "I") has a much more brilliant color than either the prior art sample ("P"), or the color of the invention sample's substrate without the capstock (as the uncapped substrate can also be viewed at the nail flange). The prior art, with the colored capstock, is more muted than the invention, and has an inferior appearance. (The same can be observed with the "cherrywood" or "CW" sample). These surprising results are not taught or suggested by the prior art.

In summary, contrary to the Examiner's assertion, the cited reference does not teach or suggest the invention as recited in Applicant's

claims, and in fact teaches away from the claimed invention; a prima facie case of obviousness has not been established. Additionally, even if such a case were established, Mr. Walrath's affidavit rebuts any potential for obviousness, as Mr. Walrath points out that the instant invention creates unexpected results, in that the coloration of the invention is unexpectedly brilliant, with unexpectedly improved woodgrain effects.

Accordingly, at least for these reasons, independent Claims 1, 17, 31, and 36 are patentable over the cited reference, as well as the remaining claims dependent therefrom, and Applicant requests withdrawal of the rejection under 35 U.S.C. §103(a).

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is being deposited with UPS 2nd Day Air in an
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P.O. Box 1450

Alexandria, VA 22313-1450, on April 18, 2007.

s/

Jan Hostasa
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